



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of: Nicolau, Y.C. et al.

Serial No: 10/069,414

Filed: August 19, 2002

For: *Enhanced Oxygen Delivery in Mammals, Methods and Reagents Related Thereto*

Attorney Docket No.: GMX-003.01

Examiner: Qazi, Sabiha Naim

Group Art Unit: 1616

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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I hereby certify that this "Response to Restriction Requirement" is being deposited with the U. S. Postal Service as First Class Mail with sufficient postage on the date set forth below in an envelope addressed to:

Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

9-30-03

Date of Signature and Mail Deposit

By:

John Barretto

Response to Restriction Requirement

Dear Examiner Qazi:

In response to the Restriction Requirement in the above-identified application, mailed July 30, 2003, the Applicants respectfully elect **Group I**, claims 1-10. However, the Applicants respectfully assert that simultaneous examination of Groups I and II (claims 11-43) would not place an undue burden on the Examiner because the Inventions are related as compositions containing a cationic lipophilic, water-soluble molecule, and an anionic ligand for a cellular receptor. See MPEP § 803 ("If the search and examination of an entire application can be made without serious burden, the [E]xaminer must examine it on the merits, even though it includes claims to independent or distinct inventions."). Therefore, the Applicants respectfully request that the Examiner modify

the instant Restriction Requirement, examining Groups I and II, i.e., claims 1-43, in the instant application.

Election of Species for Search Purposes

The Applicants respectfully elect the Species wherein the cationic, lipophilic, water-soluble molecule is BGTC (See page 18 of Specification for definition) and the anionic ligand for a cellular receptor is inositol hexaphosphate. Claims 1-43 read on the elected Species.

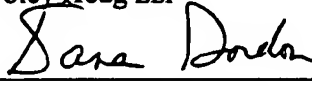
Of course, the elections of Species made herein are made solely for search purposes. The Applicants expressly reserve the right to prosecute species not elected herein in other patent applications claiming the benefit of the filing date of this application. Furthermore, the Applicants understand that upon allowance of a generic claim, they will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim. See 37 CFR 1.141.

Conclusion

The Applicants believe that they have responded fully to the Office communication dated July 30, 2003. However, if a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

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Respectfully submitted,
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FURTHER INFORMATION CONTINUED FROM PCT/ISA/ 210

Continuation of Box I.2

Present claims 1 to 49 relate to compounds defined (inter alia) by reference to the following parameters: "a cationic, lipophilic, water-soluble molecule" and "an anionic ligand for a cellular receptor". The use of these parameters in the present context is considered to lead to a lack of clarity within the meaning of Article 6 PCT. It is impossible to compare the parameters the applicant has chosen to employ with what is set out in the prior art. The lack of clarity is such as to render a meaningful complete search impossible. Consequently, the search has been restricted to the compounds BGTC, BGSC and IHP.

The applicant's attention is drawn to the fact that claims, or parts of claims, relating to inventions in respect of which no international search report has been established need not be the subject of an international preliminary examination (Rule 66.1(e) PCT). The applicant is advised that the EPO policy when acting as an International Preliminary Examining Authority is normally not to carry out a preliminary examination on matter which has not been searched. This is the case irrespective of whether or not the claims are amended following receipt of the search report or during any Chapter II procedure.